

DATE: December 31, 2007

In re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 07-06484

**DECISION OF ADMINISTRATIVE JUDGE  
NOREEN A. LYNCH**

**APPEARANCES**

**FOR GOVERNMENT**

Daniel F. Crowley, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 71-year-old employee of a defense contractor. After working his entire life, he retired in 2005. As a result of helping two family members by co-signing auto loans, he petitioned for a Chapter 7 bankruptcy in April and a Chapter 13 in October 1997. He paid his creditors and resolved the debt. In May 2007, Applicant entered into a Chapter 13 plan in May 2007. Applicant is paying his creditors under that plan. Applicant has not mitigated the financial considerations concern at this time. Clearance is denied.

## **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On October 10, 2007, DOHA issued a Statement of Reasons<sup>1</sup> (SOR) detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense for SORs issued after September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR on October 27, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on November 16, 2007. I scheduled a hearing for December 11, 2007.

The hearing was convened as scheduled on December 11, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Government exhibits (GE 1-9) were admitted. Testimony was taken from Applicant. The transcript (Tr.) was received on December 19, 2007.

## **FINDINGS OF FACT**

Applicant admitted allegations under subparagraphs 1.a, 1.b, 1.c, 1.f, and 1.h set forth in the SOR pertaining to financial considerations under Guideline F. Those admissions are incorporated as findings of fact. He denied allegations 1.d, 1.e, 1.g, 1.h, and 1.j. After a complete and thorough review of the evidence in the record, I make the following additional finding of fact:

Applicant is a 71-year-old employee of a defense contractor. He has been with his current employer working as a janitor since 2006. He completed a security clearance application on November 22, 2006.<sup>2</sup>

Applicant married in 1969 and was divorced shortly thereafter in December 1969. He has no children. He graduated from the National Institute of Technology in 1987. After working many years, he retired in 2005.<sup>3</sup>

Applicant helped various family members by co-signing auto loans. As a result, he was twice left with debt. In 1997, he co-signed a loan for a niece so that she could buy an automobile. She defaulted on the loan. He filed for Chapter 7 bankruptcy in April 1997. The debt was successfully discharged in July 1997. Prior to 1997, Applicant had no financial difficulties and paid his accounts and bills.<sup>4</sup>

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<sup>1</sup>Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive).

<sup>2</sup>GE 1 (Security Clearance Application, dated November 22, 2006).

<sup>3</sup>*Id.*

<sup>4</sup>GE 2 and 3 (Bankruptcy Petitions).

Although divorced for many years, Applicant and his ex-wife remained friends. In October of 1997, Applicant filed for Chapter 13 bankruptcy because his ex-wife had an automobile accident and the car loan was co-signed by Applicant. He paid under that plan until June 1999. He requested a dismissal from the court so that he could pay all the creditors. He then refinanced his house that year and used the proceeds to pay those debts.<sup>5</sup>

In 2000, Applicant had a short period of unemployment. He was working as a welder for a long while. However, the company needed his services as a utility worker. He continued to work until 2005 when he retired.

In 2006, Applicant moved from his hometown to a warmer climate. However, he could not sell his house at the time. He left the state and defaulted on his mortgage.<sup>6</sup> The home mortgage balance was \$85,200. The company initiated foreclosure proceedings for that amount. He also owned two vehicles. He left one vehicle behind in his home state. He did not like driving that one any more because he had difficulty getting out of the vehicle. The debt from the auto repossession is \$11,000.

Applicant denied the other debts, including cable (\$411), and direct tv (\$348) because he never signed up for direct tv. He also disputed the telephone bill (\$3,384). When he filed for chapter 13 bankruptcy, he included those debts in the 2007 plan.<sup>7</sup>

Applicant now works as a janitor for a defense contractor. He does not believe he needs a security clearance for his work. He earns approximately \$2,021 net a month and has expenses of \$1,682. He has a net remainder of \$339 at the end of the month. Under his 2007 Chapter 13 bankruptcy plan, his monthly payment is \$325 a month. Since July 2007, Applicant has been paying under the plan. He is current on his rent and daily expenses. He received some financial counseling as part of his bankruptcy proceedings.<sup>8</sup>

## POLICIES

“[N]o one has a ‘right’ to a security clearance.”<sup>9</sup> As Commander in Chief, the President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.”<sup>10</sup> The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly

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<sup>5</sup>*Id.*

<sup>6</sup>Tr. 29.

<sup>7</sup>GE 5 (Bankruptcy Petition).

<sup>8</sup>GE 6 (Response to interrogatories, dated 2007).

<sup>9</sup>*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>10</sup>*Id.* at 527.

consistent with the national interest to do so.”<sup>11</sup> An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.<sup>12</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>13</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.<sup>14</sup>

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in the Directive and AG ¶ 2(a).

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions section below.

## **CONCLUSIONS**

I have carefully considered all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

### **Guideline F: Financial Considerations**

*Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.*<sup>15</sup>

Applicant admitted filing for bankruptcy twice in 1997 and again in 2007. His credit report confirmed his debts. Thus, Financial Considerations Disqualifying Condition (FC DC) 19(a) (*inability or unwillingness to satisfy debts*) and FC DC 19(c) (*a history of not meeting financial obligations*) apply.

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<sup>11</sup>Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

<sup>12</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>13</sup>*Id.*; Directive, ¶ E2.2.2.

<sup>14</sup>Exec. Or. 10865 § 7.

<sup>15</sup>AG 18.

Applicant admitted that he co-signed two auto loans for different family members, and that as a result he had financial difficulties. He exercised poor judgment by co-signing loans for the benefit of others to his financial detriment. FC DC 19(e) (*consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis*) applies.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC 20(a) (*the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*), FC MC 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances*), FC MC 20(c) (*the person received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*), and FC MC 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Although FC MC 20 (a) does not provide a temporal or specific definition of what constitutes "recent" conduct, Applicant's 2007 bankruptcy casts doubt on his financial judgment. I find that FC MC 20(a) is not applicable.

Applicant's home foreclosure due to his inability to sell his house in 2006, and his 1997 bankruptcy due to helping family members, merits partial mitigation under FC MC 20(b). However, there is no evidence that he contacted his creditor or sought credit counseling before he left his home in 2006 to establish the type of evidence necessary for the second prong of mitigation under 20(b).

Applicant received counseling as part of his 2007 Chapter 13 bankruptcy petition. He no longer has any delinquent debts due to the counseling and his 2007 payment plan. FC MC 20(c) applies in this case.

FC MC 20(d) is applicable because Applicant used bankruptcy to resolve his debts. This was a legal and good faith effort on his part to pay the debts alleged in the SOR.

Applicant denied or disputed several debts listed in the SOR, but he included those debts in his payment plan. He did not provide documentation to substantiate the basis of his dispute. FC MC 20(e) does not apply.

### **Whole Person Analysis**

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive and AG ¶ 2(a). I have also considered all the evidence, and every finding of fact and conclusion discussed above.

Applicant is an earnest, mature gentleman who has worked his entire life. Prior to 1997, he had no financial difficulties. He helped family members by co-signing auto loans which led him to

financial difficulties that resulted in bankruptcy in 1997. He admits poor judgment in this issue. However, in 2006, he decided to move to a warmer climate. He left his home and one vehicle behind and as a result defaulted on his home mortgage and his car was repossessed. This was not a responsible way to handle the situation, and again demonstrated poor judgment. Although, he used a legal means to resolve his debt in 2007, it is not sufficient to establish a sound track record of financial responsibility given his previous history. It is not clearly consistent with the national security to grant Applicant a security clearance at this time.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on his financial issues. He is not eligible for a security clearance.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F:                      AGAINST APPLICANT

Subparagraphs 1.a-1.j:                              Against Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Noreen A. Lynch  
Administrative Judge